

**Fair Political Practices Commission**  
**MEMORANDUM**

**To:** Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh and Remy

**From:** Lawrence T. Woodlock, Senior Commission Counsel  
Scott Hallabrin, General Counsel

**Subject:** Payments by Sponsors for Fundraising Events by Sponsored Committees

**Date:** April 27, 2007

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Proposed Commission Action(s): Rescind staff advice that a sponsor's payment to support a campaign fundraiser by its sponsored committee is a contribution to the sponsored committee. Alternatively, consider repeal of Regulation 18215(c)(16), and/or calendar a regulation to clarify the scope of Section 85303.<sup>1</sup>

Discussion: Charles H. Bell, Jr. argues that the enactment of Section 85303(c) in 2001 requires amendment of regulation 18215(c)(16), adopted in 1997 to exclude from the definition of "contribution" a payment by a sponsor for the establishment and administration of a sponsored committee. When the Commission adopted this regulation, Proposition 208 had just become law, imposing a \$500 committee contribution limit, a provision that sponsors said would require termination of many sponsored committees since it often cost more than \$500 per year to provide office space and basic staff services. The Commission adopted regulation 18215(c)(16) to avoid this outcome, but it twice rejected a further proposal from Mr. Bell to exclude payment for committee fundraisers from classification as a "contribution." Aware of this background, staff has continued to advise that a sponsor's payment of fundraising costs cannot be categorically excluded by Regulation 18215(c)(16) from classification as a "contribution." Mr. Bell claims that Section 85303(c) is at odds with this view because the statute now provides that, with one notable exception, contributions to committees are no longer subject to contribution limits.

Staff rejected the argument that the Commission is *required* to amend this regulation in two advice letters attached to this memorandum with the associated requests from Mr. Bell, which pursue the argument in detail. (Attachment One.) The simplest explanation for staff's response is that Section 85303 is a contribution *limit*, which does not alter the definition of "contribution." Regulation 18215 interprets Section 82015, the Act's definition of "contribution." It is a settled canon of statutory construction that a new statute which does not amend existing definitions must be read in light of those definitions, and the Act expressly affirms this rule in Section 82000. Thus it is not Regulation 18215 that must be read to conform to Section 85303; instead it is the *statute* that must be read to conform to the definitions in effect when the statute was enacted.

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<sup>1</sup> Commission regulations are found at Title 2, Sections 18109 – 18997 of the California Code of Regulations. Unless otherwise noted, all statutory citations refer to provisions of the California Government Code.

Mr. Bell's April 17<sup>th</sup> letter (Attachment Two) continues to press for reversal of staff's position on sponsored committee fundraising subventions, but the letter also draws attention to a question broader than the limits and exceptions applicable to *sponsored* committees – the effect of Section 85303 on the limit applicable to committees generally. This statute, of course, is quite broad in scope, and is not limited to sponsored committees, which are nowhere mentioned. In reality, with the passage of Proposition 34, the straightforward \$500 limit established by Proposition 208 was replaced with Section 85303(a), whose limit is ten times higher than prior law, *and* expressly limits *only* contributions “made for the purpose of making contributions to candidates for state elective office.” (See Section 85303(c).) The meaning and scope of this quoted language seems to underlie the dispute that gave rise to this agenda item, and it has never been addressed by the Commission. Mr. Bell characterizes this question as more difficult to resolve than the narrower questions initially raised, but the construction of Section 85303 cannot be avoided in confronting even the narrowest of his proposals – to expand the advantages offered to sponsored committees in Regulation 18215(c)(16).<sup>2</sup>

The contention that Section 85303 does not limit support for PAC fundraisers must ultimately rest on a vision of the statute so narrow that the statutory limit would apply to a committee only in cases when it acts as a virtual intermediary between donor and candidate. Staff believes that a public rulemaking process should be undertaken before the Commission endorses such a view.

Recommendations:

1. The Commission is not required by law to rewrite the definition of “contribution” to benefit sponsored committees, and no other need for such a rule has been advanced. Accordingly, staff recommends that the Commission decline to reverse its prior position on fundraising subventions, and decline the invitation to reverse staff advice on the limited scope of Regulation 18215(c)(16).
2. The larger question, on the scope and application of Section 85303, is something that staff believes the Commission should address. Even if the Commission were inclined to take up some of the “narrow” issues urged by Mr. Bell, construction of the governing statute should be the first order of business, to clarify the need, if any, for additional rules to benefit sponsored committees. Thus staff recommends that the Commission calendar prenotice discussion of a regulation interpreting Section 85303.

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<sup>2</sup> The replacement of the Proposition 208 contribution limit with a much more liberal provision should not, in fact, signal a need for *added* protection of sponsored committees. If anything, it would be more reasonable to begin discussing the repeal of Regulation 18215(c)(16), which has outlived the statute that justified its adoption.